

Message Text

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C O N F I D E N T I A L SANTIAGO 8079

E.O. 11652: GDS

TAGS: SHUM PFOR SREF PINT CI

SUBJECT: EXPULSION OF DEMOCRATIC LAWYERS

REF: A) SANTIAGO 7664; B) SANTIAGO 7718 (NOTAL)

1. SUMMARY: AS WAS EXPECTED, THE SANTIAGO APPEALS COURT REJECTED THE VARIOUS MOTIONS SUBMITTED IN FAVOR OF EXPELLED LAWYERS/POLITICIANS EUGENIO VELASCO AND JAIME CASTILLO. ASIDE FROM THE PERSONAL ANGUISH INVOLVED, THE EFFECT OF THIS EPISODE WILL PROBABLY BE TO INCREASE ANTI-GOVERNMENT SENTIMENT AND POLARIZATION WITHIN CHILE, AND TO PROVIDE ANOTHER CHARGE TO BE USED BY CHILE'S FOREIGN CRITICS. END SUMMARY.

2. APPEALS COURT ACTION: SINCE THE EXPULSIONS AGUUST 6, THE SANTIAGO APPEALS COURT HAS RULED AGAINST TWO PROCEDURAL AND ONE SUBSTANTIVE MOTIONS SUBMITTED BY VELASCO'S AND CASTILLO'S LAWYERS ON THEIR BEHALF. THE COURT ON AUGUST 14 WITHDREW ITS AUGUST 6 REQUEST TO THE GOC TO SUSPEND THE ORDER OF EXPULSION (PARA FOUR, REF A); IT ARGUED THAT ITS REQUEST WOULD NOT HAVE BEEN MADE HAD IT KNOWN THE EXPULSIONS HAD ALREADY TAKEN PLACE. THE SAME DAY IT REJECTED THE REQUEST THAT THE TWO EXPELLEES BE ALLOWED TO RETURN TO CHILE IN ORDER TO CONDUCT THEIR OWN CASES.

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3. ON AUGUST 17 THE COURT REJECTED THEIR HABEAS CORPUS

("AMPARO") REQUESTS, ON A TWO-TO-ONE SPLIT DECISION. THE EMBASSY DOES NOT YET HAVE THE FULL TEXT OF THE DECISION, BUT THE MAJORITY APPARENTLY LIMITED ITSELF TO AN ESSENTIALLY NOTARIAL FUNCTION IN ITS PRINCIPAL FINDING--I.E., THAT THE EXPULSION DECREES HAD DULY CITED RELEVANT LAW, BEEN SIGNED BY THE DEFENSE AND INTERIOR MINISTERS AND THE CONTROLLER GENERAL, AND STATED THE REASON FOR EXPULSIONS (NATIONAL SECURITY), AS REQUIRED BY LAW. THE MAJORITY CONSIDERED UNFOUNDED THE DEFENSE ASSERTION THAT THE TWO LAWYERS HAD NOT BEEN ALLOWED TO CHOOSE THEIR DESTINATION AS REQUIRED BY LAW, SINCE THE GOVERNMENT LAWYER STATED THAT THEY HAD DECLINED TO INDICATE THEIR CHOICE.

4. ACCORDING TO A RADIO ACCOUNT, THE MINORITY JUDGE CONSIDERED THE LAW ON EXPULSIONS UNCONSTITUTIONAL AND STATED THAT THE EXPULSIONS AS CARRIED OUT WERE IMPROPER, SINCE THE LAWYERS WERE NOT GIVEN A CHOICE OF DESTINATION.

5. THE DEFENSE NO DOUBT WILL APPEAL THE HABEAS CORPUS REQUEST TO THE SUPREME COURT, WHICH IS EXPECTED TO REJECT IT.

6. RIPPLES IN LEGAL CIRCLES: THE COURT PROCEEDINGS PROVOKED EXTRAORDINARY INTEREST, AS SHOWN BY COURTROOM ATTENDANCE AND THE MEDIA'S EXTENSIVE REPORTING. WE GATHER THAT MANY CONSERVATIVE, NORMALLY PRO-GOVERNMENT LAWYERS WERE APPALLED AT THE SUMMARY TREATMENT GIVEN TWO DISTINGUISHED COLLEAGUES. ON THE OTHER HAND, THE HIGHLY CONSERVATIVE LEADERSHIP OF THE BAR ASSOCIATION REJECTED A REQUEST TO INTERVENE IN FAVOR OF THE EXPELLEES, AND IMPLICITLY JUSTIFIED THE GOC ACTION. FINALLY, CHRISTIAN DEMOCRATIC LAW PROFESSORS MAXIMO PACHECO AND FRANCISCO CUMPLIDO WERE REMOVED FROM THEIR POSTS IN THE UNIVERSITY OF CHILE FOR HAVING SPOKEN IN THE CLASSROOM IN FAVOR OF VELASCO-CASTILLO. THEY WERE ALREADY AT ODDS WITH LAW FACULTY DEAN ROSENDE WHO ARGUED THE GOVERNMENT'S CASE BEFORE THE APPEALS COURT.

7. COMMENT: THE LAWYERS FOR VELASCO AND CASTILLO, WITH CONFIDENTIAL

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THE CHRISTIAN DEMOCRATS AND RADICALS BEHIND THEM, HAD NOT EXPECTED TO WIN THEIR CASE. THEY KNOW TOO WELL CHILE'S CONSTITUTIONAL SYSTEM, WHICH GRANTS ALMOST UNLIMITED EXECUTIVE POWERS UNDER THE STATE OF SIEGE. THE JUDICIARY HAS NEVER CHALLENGED THE MILITARY GOVERNMENT IN THIS AREA. MOREOVER, THE EXPELLEES' LAWYERS HAD ALREADY PRESSED THE SIMILAR CASE OF PDC LEADER RENAN FUENTEALBA, WHO WAS EXPELLED IN NOVEMBER 1974 (75 SANTIAGO 1832 AND

PREVIOUS), WITHOUT SUCCESS.

8. THE EFFECT OF THE EXPULSIONS, WHILE NOT CRITICAL, SHOULD NOT BE MINIMIZED. ON THE ONE HAND, THE JUNTA HAS ASSERTED ITS AUTHORITY WITH A STERN HAND AND NO DOUBT COUNTS ON THE INTIMIDATING EFFECT OF ITS TOUGHNESS. ON THE OTHER, PRECIPITATE ACTION OF THIS SORT TENDS ALSO TO CONVEY AN IMPRESSION OF LACK OF SELF-CONFIDENCE. MOREOVER, IT EMBARRASSES THE LEGAL PROFESSION, FURTHER EMBITTERS THE DEMOCRATIC POLITICAL LEADERS, AND TENDS TO POLARIZE POLITICALLY KNOWLEDGEABLE PUBLIC OPINION. ADDED TO OTHER RECENT EVENTS--NOTABLY THE BOMB SCARE INVOLVING EX-PRESIDENT FREI AND THE ATTACK ON THE BISHOPS RETURNING FROM ECUADOR (SANTIAGO 8028) THE SUMMARY TREATMENT GIVEN VELASCO AND CASTILLO WILL CONTRIBUTE TO THE UNUSUAL CLIMATE OF TENSION BEGINNING TO BECOME APPARENT HERE. WE EXPECT THAT ALL THESE MATTERS WILL FIGURE IN THE NEXT REPORT OF THE UN HUMAN RIGHTS COMMISSION WORKING GROUP AND THE DEBATE ON CHILE IN THE 31ST UNGA.

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